Law (1932) Department.
General

MS SERIES.

G.O. No. 3178

DATED 30-8-32

[Despatch Abstract.]

Criminal Appeal - Appeal against acquittal - S.C. No. 25/32

Additional Judge, South Kanara - declined.

L & L 3968B
CF
15.8.32
VE
SS

Law (General) **DEPARTMENT.**

Received ..... 19 *Registered* 19

Subject.

Criminal Justice - S.C. 25/32 on the file of the Sessions Judge, South Kanara - Order of acquittal of 1st accused - Appeal before the High Court - Recommended.

ENCLOSURES.
No. .....
.....
Spare copies .....

L.Dis. No. 6650-32.

Station Mangalore, *Dated the* 11th August 1932.

From (Name) Khan Bahadur J. Hussain, Bar-at-law,
(Designation) Dt. Magistrate of South Kanara.

To The Secretary to the Government of Madras,
Law (General) Department,
Madras.

Sir,

47-16 copies

In S.C. 25/32 on the file of the Sessions Judge, South Kanara, five accused were charged with the offence of dacoity committed by them on the night of 5-1-32 in the house of Gouramma (P.W.4) of Kaukrady village, Puttur Taluk. There were two adult men (P.Ws.6 & 7) in the house of P.W.4 at the time and they were also wrongfully confined in their rooms by the dacoits.

The Sessions Judge while convicting four of the accused has acquitted the 1st accused Vishnumurthy Shabaraya by accepting the verdict of the Jury who unanimously brought a verdict of 'not guilty' against him.

This verdict of the jury was due to a misdirection of the Judge in his charge to the jury in para 17 of the Judgment. The evidence clearly shows that he was one of the important members of the gang of dacoits including the absconding accused Madhava Balthillaya and as the evidence against all the accused is of the same nature to the effect that they produced the stolen property which they divided among themselves and made a statement to that effect, there was no reason to acquit ~~(and)~~ the 1st accused while convicting the other accused. There is moreover the confessional statement of 3rd accused that the 1st accused was also one of them. I recommend that Government should they think fit to do so may be pleased to direct the Public Prosecutor, Madras to file an appeal before the High Court against the order of acquittal of the 1st accused in the case.

The Public Prosecutor, Mangalore who was consulted is of opinion that there is a fair chance of success if an appeal is filed. I enclose herewith a copy of his letter together with a copy of the draft appeal memo prepared by him and also a copy of the letter of the Dt.Superintendent of Police proposing the ---- appeal. I also enclose herewith two printed copies of the ---- Judgment of the Sessions Case in question.

A. Krishnamurti 13/8/52

For Dt.Magistrate.

Letter from the Dt. Superintendent of Police, South Kanara.
To the Dt. Magistrate, South Kanara.
Dated 16th/19th July 1932, R.C.No. 1232/Genl.1932.

In enclosing herewith a copy of Judgment in Sessions Case No. 25/32, I have the honour to request that you will be so good as to move Government to file an appeal against the acquittal of the 1st accused, before the High Court.

2. The five accused in this case were charged with the offence of dacoity committed by them on the night of 5th January 1932 in the house of Gowramma (P.W.4) of Kaukrady village, Puttur Taluk. At the time of the occurrence there were two adult men in the house (P.Ws. 6 and 7) who were also wrongfully confined in their rooms by the decoits to facilitate the commission of the offence.

3. From a perusal of the charge to the Jury delivered by the learned Sessions Judge, it is clear that the main evidence in the case consists of the production of stolen property by the accused after confessing that that forms their share of the spoil. The verdict of the Jury was that the 1st accused was not guilty, but accused 2 to 5 were guilty, and the Sessions Judge accepting their verdict convicted A2 to 5 and acquitted A.1. It is submitted that the acquittal of A.1 was wrong. The ------ verdict of the Jury in this respect was perverse. To a large extent this verdict is due to the misdirectionsof the Judge in his charge to the Jury as the following facts would show.

4. The learned Judge while summing up the evidence rightly pointed out that the evidence of production by the accused is an important piece of evidence in this case, but towards the concluding part of his charge, he made a clear mis-statement of facts. In <u>para 18</u> he says "<u>At this place I must again remind</u> line 40 <u>you that according to the evidence of P.Ws.4,6 and 7 the 1st accused was not one of the dacoits though if we take the confessional statement of A.3 he was one of them</u>". He is not quite accurate to say that P.Ws.6 and 7 state that accused 1 was not one of the dacoits. It is perfectly true that accused 1

was not identified by any one, but that was because he did not go inside the house but stationed himself outside the back door of the room in which P.W.7 was sleeping. It is remembered that the offence took place at the dead of a dark night, there is nothing strange in accused 1 not having been identified by any one. In para 15 line 30 the Sessions Judge has said "The 1st accused though well known to P.Ws.4,6 and 7, was not identified by any one of them either ~~either~~ as one of the people that were in the house or as one of the people in the yard. It is material that you should bear this in mind in coming to the conclusion whether the first accused can be held to be guilty of committing dacoity or only of any lesser offence". Here again there is a misdirection in as much as P.W.7, a School master who came to the place only a month back did not know the 1st accused as well as the Judge presumes and ~~that~~ has directed the Jury to presume. According to the evidence, A.1 was guarding door outside P.W.7's room. The position of the house and outhouse is such that anyone standing in the position in which A.1 was standing could not possibly have been seen by any of the witnesses even if the night had been a bright one. Further the Judge was wrong in assuming and directing the Jury to assume as he has done in para 17 line 26 onwards--that merely because there was no evidence that he has taken any part in using force or wrongful confinement or in removing the property that he would not be guilty of dacoity or any lesser offence, for if he did go to the house and was only taking a minor part such as guarding the approaches to the house etc., as this is also one of the actions in furtherance of the common intention of the whole gang, he must be deemed to be guilty of dacoity as any other member of the gang who took a more active part therein. The learned Sessions Judge has not directed the Jury with sufficient force as regards the presumption that arises from recent possession of stolen property though no doubt he has referred to it in one place.

In finding A2 to 5 guilty of dacoity the Jury must be deemed to have accepted the evidence of P.Ws.3,9 and 10 as regards

the production of the property by them with the confessiona statements of A3 as also the evidence of identification of property by P.W.4. If they did so as regard A2 to 5, there is no reason why the very same evidence against A1 should have been discarded. If the evidence of P.W.s 3, 9 and 10 is accepted that the stolen property was pointed out by A1 from the cleft of a rock, by no stretch of imagination can it be said that any person would keep his property in such a place. If therefore the usual presumption of theft or receiving stolen property is raised as against A1 then his own confessional statement leading to the discovery of property supported by the confessional statement of A3 (Ex.B) can lead only to one conclusion that the ------ 1st accused is as guilty of dacoity as others. It can thus be seen that the verdict of the Jury is perverse. The 1st accused who being the potail of the village ought to have known better appears in fact to have planned and directed the dacoity along -- with his relation Madhava Balthilaya (absconding accused) and --- there has been a grave miscarriage of justice in this case.

I would therefore request that in the interest of justice you will be so good as to move Government to file an appeal ----- against the acquittal of this man.

Letter-from the Public Prosecutor, Mangalore.
To-the District Magistrate, South Kanara.
Dated-Mangalore, the 10th August 1932.
No.-Ref.No.39/32.

Reference:- Sessions Case 25/32 - Sessions Court, South Kanara.

Your N.Ref.C1-6650-32, dated 21.7.1932.

I think there is a fair chance of success if an appeal is filed. Draft appeal memo. is herewith sent.

Sessions Case 25 of 1932.

Appeal Memo.

1. The verdict of the Jury that the 1st accused is not guilty of dacoity or theft, is against established facts of the case. The sessions Judge went wrong in accepting that verdict and acquitting the 1st accused.

2. The verdict of the Jury was perverse.

3. Evidence clearly shows that he is the one important - member of the gang together with the absconding accused Madhava Balthillaya. In this connection the evidence of P.W.4 and the confessional statement of the 3rd accused may be considered.

4. When accused 2 to 5 were convicted there are no grounds for acquitting the 1st accused.

5. Evidence against all the accused including the 1st is of the same nature viz. producing the property making a statement. Witnesses speaking to the production are the Circle Inspector, P.W.3 and independent persons. Under the circumstances, therefore, there is no sufficient justification for differentiating 1st accused from the other four.

6. Probably the Jury were misled by the last four sentences of the charge of the Sessions Judge, in paragraph 17. It was a clear misdirection and the Jury might have been misled. The 1st accused has not adduced any evidence to prove that the articles M.O.s 2 to 10, alleged to have been produced by him were his. Again the Sessions Judge while convicting the 2nd accused, refuses to give him enhanced punishment though he was previously convicted for theft.

KSR
13.1.32

15

Law (General)

C.No.3969-B.

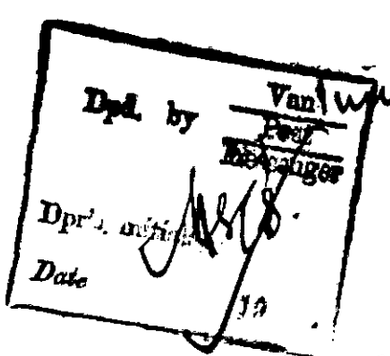
Endt. No 3969B-/d 17-8-32

Criminal appeal — appeal against acquittal- S.C.No. 25/32 on the file of the Sessions Judge, South Kanara. From the D.M. South Kanara.

pp1-2 CF Ref. No. Lis. 6650-32 d. 11-8-32

Referred to the Public Prosecutor, Madras. for opinion whether an appeal to the High Court against the Judgement of the Sessions Judge, South Kanara acquitting the first accused in S.C. No. 25/32 on his file is likely to be successful. He is requested to forward his opinion as early as possible.

17/8



17/8

To the P.P. Madras (with a Copy of the D.M's letter and its Enclosures in original to be returned with reply)

pp 3-14 CF

The date of the Judgement is 22-6-32; and the appeal time of 3 months expires by 21-9-32

C.F. 30.

JUDICIAL DEPARTMENT.

Received ..... 19 *Registered* 19

L. Dis 4121B 24/8/32

Subject.

Appeal against acquittal - S.C.25/32 - Sessions Judge of South Kanara - forwarding opinion.

ENCLOSURES.

No. .....

.....

Spare copies .....

Opinion No. 34 of 32.

Station Madras, *Dated the* 24th August 1932.

From (Name) L. H. Bewes Esq.,

(Designation) Public Prosecutor, Madras.

To The Secretary to the Government of Madras,

Law (General) Department.

Sir,

With reference to Endorsement No. 3969 B-1, Law (General) dated 17th August 1932, I have the honour to forward herewith my opinion in the matter.

2. The enclosures received with the endorsement are herewith returned.

I have the honour to be,
Sir,
Your most obedient servant,

L. H. Bewes

Public Prosecutor

RS/24-8.

17

Endorsement No. 3969 B-1, Law (General) dated 17-8-1932.

OPINION

The case for the prosecution is that the five accused before the Sessions Judge of South Kanara and an absconding accused committed dacoity in the house of P.W.4 on the night of the 5th January this year. The evidence against the accused was of identification, recovery of property belonging to P.W.4 and the confession of the third accused. The Jury accepted the evidence against accused 2 to 5 and gave the benefit of the doubt to the first accused, against whom there was only the confession of the third accused in which he was implicated and the recovery of M.Os 2 to 10. None of the prosecution witnesses identified the first accused. The evidence against him, with the infirmities, was clearly put to the Jury in paragraph 18 of the Charge to the Jury and I am at a loss to find out any defects in the Charge. Under these circumstances it is impossible to say that the learned Sessions Judge's Charge to the Jury is defective, much less that the verdict of the Jury is perverse.

An appeal against the acquittal is not likely to be successful.

T. H. Bass

Madras,
24th August 1932.

Public Prosecutor.

RS/24-8.

38/3978

3969B

LAW I-4—120—22-12-30.

*Received*_____193 *Registered*_____193

Criminal appeal-Appeal against acquittal-~~Negatived.~~

Sessions Case No. 25/32, Sessions Judge, South Kanara- Declined.

LAW (GENERAL) DEPARTMENT.

READ—the following papers:—

C.No.3969-B From the District Magistrate, South Kanara, No.____, dated____193 L.Dis.No.6650-32 d. 11.8.32

Endorsement to the Public Prosecutor, Madras, No.3969-B1, dated 17.8.32 193

C.No.4121-B From the Public Prosecutor, Madras, No. Opinion 34/32, dated 24.8.32 193

ORDER—Mis. No.3178, dated 30.8.1932.

P.P.'s opinion at P.17C.F. The Government do not consider it advisable to appeal to the High Court against the judgment of the Sessions Judge, South Kanara, acquitting the first accused in S.C.No. 25 of 193 2 on his file.

28.8.32 ICW 28-8-32

29/8

(True Extract.) 29/8/32.

Secretary to Government.

GOVERNMENT OF MADRAS 29 AUG 1932 LAW DEPARTMENT

To

The District Magistrate, South Kanara, q of I & o. Dpl. of III & o. (With the Sessions Judge's returned)

The Public Prosecutor, Madras. q and o.

15 days

The appeal time of three months expires by 21.9.32

8/28.8.32 ICW 28/8